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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Applicability of Special Use Permit Requirements to Certain Categories of Activities Conducted Within the National Marine Sanctuary System.

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice; request for public comments.

SUMMARY: In accordance with a requirement of Pub. L. 106-513 (16 U.S.C. 1441(b)), NOAA hereby gives public notice of the applicability of the special use permit requirements of Section 310 of the National Marine Sanctuaries Act to certain categories of activities conducted within the National Marine Sanctuary System. In addition, NOAA is seeking public comment on the subject of special use permits.

DATES: Comments must be received on or before [INSERT 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket ID NOAA-NOS-2012-0162, by one of the following methods:

- Electronic submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>. You may enter the following docket number to submit comments: NOAA-NOS-2012-0162

- Mail: Submit all written comments to Vicki Wedell, Office of National Marine Sanctuaries, 1305 East West Highway (N/NMS2), 11th floor, Silver Spring, MD 20910.

Instructions: To submit electronic public comments through the Federal eRulemaking Portal, <http://www.regulations.gov>, select "submit a comment" under the heading "Begin a search by choosing a task or entering a keyword," type docket number NOAA-NOS-2012-0162 under the heading "Enter keyword or ID," and select "Search" to receive search results. Then follow online instructions for submitting your comments.

All comments received are a part of the public record and will be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. ONMS will accept anonymous comments (for electronic comments submitted through the Federal eRulemaking Portal, enter N/A in the required fields if you wish to remain anonymous).

Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Vicki Wedell, Office of National Marine Sanctuaries, 1305 East West Highway (N/NMS2), Silver Spring, MD 20910, telephone (301) 713-3125, extension 237, email Vicki.Wedell@noaa.gov.

SUPPLEMENTARY INFORMATION: This Federal Register document is also accessible via the Internet at: [INSERT GPO ACCESS WEB ADDRESS - <http://www.access.gpo.gov/>]

I. Background

Congress first granted NOAA the authority to issue special use permits for the conduct of specific activities in national marine sanctuaries in the 1988 Amendments to the National Marine Sanctuaries Act (16 U.S.C. 1431 et seq.; NMSA) (Pub. L. 100-627). The NMSA allows NOAA to issue special use permits to establish conditions of access to and use of any sanctuary resource or to promote public use and understanding of a sanctuary resource. Since 1988, special use permits have generally been issued to persons conducting commercial (and usually revenue-generating) operations in national marine sanctuaries. Section 310 of the NMSA allows NOAA to issue special use permits to authorize the conduct of specific activities and allows NOAA to assess fees for special use permits.

In the National Marine Sanctuaries Amendments Act of 2000 (Pub. L. 106-513), Congress added a requirement that prior to requiring a special use permit for any category of activity, NOAA shall give appropriate public notice. Subsection (b) of section 310 of the NMSA, as amended by Public Law 106-513, provides: "[NOAA] shall provide appropriate public notice before identifying any category of activity subject to a special use permit under subsection (a)." 16 U.S.C. 1441(b). In addition, Public Law 106-513 gives NOAA the authority to waive,

reduce, or accept in-kind contributions in lieu of special use permit fees when the activity does not derive a profit from the access to or use of sanctuary resources. 16 U.S.C. 1441(d)(4).

On January 30, 2006, NOAA published a list of five categories for which the requirements of special use permits would be applicable (71 FR 4898):

1. The disposal of cremated human remains by a commercial operator in any national marine sanctuary;
2. The operation of aircraft below the minimum altitude in restricted zones of national marine sanctuaries;
3. The placement and subsequent recovery of objects associated with public events on non-living substrate of the seabed;
4. The deposit or placement and immediate recovery of objects related to special effects of motion pictures; and
5. The continued presence of commercial submarine cables beneath or on the seabed.

In publishing this list, NOAA clarified that simply being consistent with one of the categories would not guarantee approval of a special use permit for any given activity. Special use permit applications are reviewed for consistency with the relevant sanctuary's management plan and regulations, the NMSA, as well as the published description of the category. Individual special use permit applications are also reviewed with respect to all other pertinent regulations and statutes, including the National Environmental Policy Act. Special use

permits are issued only for activities NOAA determines can be conducted in a manner that does not destroy, cause the loss of, or injure sanctuary resources.

II. Summary of Proposed Changes and Additions

NOAA proposes to revise three of the five existing categories of special use permits: (1) disposal of cremated human remains in any national marine sanctuary; (2) the placement and recovery of objects associated with public or private events on nonliving substrate of the seabed; and (3) the placement and subsequent recovery of objects related to commercial filming. NOAA is also proposing to add two new categories of special use permits for: (1) recreational diving near the USS Monitor; and (2) fireworks displays. The remaining two special use permit categories would remain unchanged: (1) the operation of aircraft below the minimum altitude in restricted zones of national marine sanctuaries; and (2) the continued presence of commercial submarine cables beneath or on the seabed.

The disposal of cremated human remains in any national marine sanctuary.

NOAA is proposing to eliminate the requirement that the disposal of human cremains be performed by a "commercial operator." Allowing both commercial operators and private individuals to discharge cremated human remains more adequately captures the full range of permit applicants for this activity. NOAA previously stated that when private individuals wish to scatter cremated human remains in a national marine sanctuary, they may request an authorization of the EPA's general permit from the appropriate sanctuary superintendent on a case-by-case basis pursuant to NOAA's authority under section 922.49. Because section 922.49 only applies to six sanctuaries individuals wishing to scatter cremated human remains in other sanctuaries may not be able to do so. NOAA has determined

that this restriction is unnecessary and that the ability to permit this activity should apply to all sanctuaries.

The placement and recovery of objects associated with public or private events on non-living substrate of the seabed.

NOAA is proposing to expand the type of event associated with this category to include public and private events. As currently written, the category is specific to "public" events. NOAA believes that the previous Federal Register notice was not clear whether this term includes events that are not intended to be open to the public (i.e., private events or those run by commercial operators). NOAA has several examples of activities in Florida Keys National Marine Sanctuary that are not generally open to all members of the public, whether it is because the event is hosted by private industry or because participation requires an entry fee, etc. Specific examples of such events involve the promotion of SCUBA diving; an annual underwater pumpkin carving contest; and a contest to determine the world record for underwater ironing. NOAA believes that expanding the category to apply to events that are generally open to all members of the public and those that are limited to a restricted number of participants more accurately captures the types of events that can be conducted in a national marine sanctuary under the requirements of the special use permit.

The placement and recovery of objects related to commercial filming.

NOAA is proposing to expand the category to include commercial filming, rather than just the special effects related to motion pictures. NOAA has found the terms "special effects" and "motion picture" to be too limiting and should be eliminated from the category description in favor of the more broad term

"commercial filming" which is intended to capture all aspects of motion pictures and other media productions.

Recreational diving near the USS Monitor.

NOAA is proposing to add a new category of special use permit for recreational diving near the USS Monitor within Monitor National Marine Sanctuary. NOAA's management philosophy for Monitor National Marine Sanctuary and other maritime heritage resources favors in situ preservation over artifact recovery. As such, and to enhance public awareness and appreciation of the USS Monitor, NOAA has determined that enhancing recreational diving access to the wreck is a priority. NOAA believes that recreational diving near the USS Monitor can be conducted in a manner that does not injure maritime heritage resources of the sanctuary and therefore, it is an activity that should qualify for special use permits.

Fireworks displays.

NOAA is proposing to add a new category of special use permit for fireworks displays in sanctuaries. Fireworks are discharged from land or from a barge offshore (that is close enough for people to view). Permits are typically issued to individuals, pyrotechnics companies, or municipalities for special events. NOAA would evaluate each special use permit application for this category individually and against all applicable sanctuary regulations, laws, and policies. As with all other special use permits, permits would be issued under this category only if NOAA determines the activities can be conducted in a manner that does not destroy, cause the loss of, or injure sanctuary resources. For example, possible measures to mitigate adverse impacts to wildlife include changes to timing or location, and ensuring debris related to exploded fireworks are removed.

Summary

As proposed in this notice, the categories of activities that would be subject to the requirements of special use permits would be:

1. The disposal of cremated human remains in any national marine sanctuary;
2. The operation of aircraft below the minimum altitude in restricted zones of national marine sanctuaries;
3. The placement and recovery of objects associated with public or private events on non-living substrate of the seabed;
4. The placement and recovery of objects related to commercial filming;
5. The continued presence of commercial submarine cables beneath or on the seabed;
6. Recreational diving near the USS Monitor;
7. Fireworks displays.

III. Request for Comments

NOAA is requesting comments on the modification of current categories of special use permits and the addition of new categories to the requirements of special use permits.

IV. Classification

A. National Environmental Policy Act

NOAA has concluded that this action will not have a significant effect, individually or cumulatively, on the human environment. This action is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement in accordance with Section 6.03c3(i) of NOAA Administrative Order 216-6. Specifically, this action is a notice of an administrative and legal nature. Furthermore, individual permit actions by the ONMS will be subject to additional case-by-case analysis, as required under NEPA, which will be completed as new permit applications are submitted for specific projects and activities.

NOAA also expects that many of these individual actions will also meet the criteria of one or more of the categorical exclusions described in NOAA Administrative Order 216-6 because special use permits cannot be issued for activities that are expected to result in any destruction of, injury to, or loss of any sanctuary resource. However, the special use permit authority may at times be used to allow activities that may meet the Council on Environmental Quality's definition of the term "significant" despite the lack of apparent environmental impacts. In addition, NOAA may, in certain circumstances, combine its special use permit authority with other regulatory authorities to allow activities not described above that may result in environmental impacts and thus require the preparation of an environmental assessment or environmental impact statement. In these situations NOAA will ensure that the appropriate NEPA

documentation is prepared prior to taking final action on a permit or making any irretrievable or irreversible commitment of agency resources.

B. Paperwork Reduction Act

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number. Applications for the special use permits discussed in this notice involve a collection-of information requirement Subject to the requirements of the PRA. OMB has approved this collection-of-information requirement under OMB control number 0648-0141.

The collection-of-information requirement applies to persons seeking special use permits to conduct otherwise prohibited activities and is necessary to determine whether the proposed activities are consistent with the terms and conditions of special use permits prescribed by the NMSA. Public reporting burden for this collection of information is estimated to average twenty four (24) hours per response (application, annual report, and financial report), including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This estimate also includes the significant time that may be required should the applicant choose to provide environmental information for preparing a draft of any documentation that may be required under the National Environmental Policy Act (NEPA), e.g., environmental impact statement or environmental assessment. If the applicant chooses not to provide the information needed to prepare a draft of any NEPA documentation for the proposed

activity, or if only minimal NEPA documentation is needed, the public reporting burden would be much less (approximately one hour for each response).

Dated: November 6, 2012.

Daniel J. Basta

Director

Office of National Marine Sanctuaries

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